IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 23RD JULY 2007 / 1ST SRAVANA 1929

WA.No. 513 of 2002(B)

AGAINST THE JUDGEMENT IN OP.4870/1996 Dated 01/02/2002
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APPELLANTS/PETITIONERS
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1. K.G.RAVINDRAN, DRIVER, CUSTOM HOUSE,
   COCHIN-3, RESIDING IN QUARTER NO.35,
   NEW CUSTOMS QUARTERS, COCHIN-3.

2. K.PATHAHULLA, SUKANI, CUSTOM HOUSE,
   COCHIN-3, RESIDING IN QUARTER NO.32,
   NEW CUSTOMS QUARTERS, COCHIN-3.

3. P.V.RAVINDRAN, SEPOY CUSTOM HOUSE,
   COCHIN-3, RESIDING AT QUARTER NO.61,
   NEW CUSTOMS QUARTERS, COCHIN-3.

4. B.R.NAIR, SEPOY, CUSTOM HOUSE,
   COCHIN-3, RESIDING AT QUARTER NO.17,
   NEW CUSTOMS QUARTERS,COCHIN-3.

5. N.R.K.PILLAI, HAVILDAR, CUSTOM HOUSE,
   COCHIN-3, RESIDING AT QUARTER NO.20,
   NEW CUSTOMS QUARTERS, COCHIN-3.

BY ADV. SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
SRI.M.R.RAJESH
SMT.SREELEKHA PUTHALATH

RESPONDENTS/RESPONDENTS:
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1. KERALA WATER AUTHORITY, REP. BY ITS
   MANAGING DIRECTOR, THIRUVANANTHAPURAM.

2. ASSISTANT EXECUTIVE ENGINEER,
   KERALA WATER AUTHORITY, WATER SUPPLY SUB DIVISION,
   KARUVELIPADY, KOCHI.

3. THE CORPORATION OF COCHIN,
   REP. BY ITS COMMISSIONER, KOCHI.

4. THE COCHIN PORT TRUST, REPRESENTED BY ITS
CHAIRMAN, KOCHI-9.

5. THE COMMISSIONER OF CUSTOMS,
CUSTOM HOUSE, KOCHI-9.

6. GOVERNMENT OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT OF KERALA IN THE LOCAL
ADMINISTRATION DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

R6 BY SR. GOVERNMENT PLEADER SMT.MEERA
R5 BY CGSC MR.ABRAHAM THOMAS
R4 BY SRI.B.S.KRISHNAN (SR.),
SRI.K.ANAND &
SMT.LATHA KRISHNAN
SC KWA
SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR GENERAL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 23/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

W.A.No.513 of 2002

Dated, this the 23rd day of July, 2007

JUDGMENT

K.T.Sankaran, J.

This writ appeal is filed by the petitioners in O.P.No.4870 of 1996. The prayers made by the petitioners in the writ petition are as follows:

> "i) to declare that the petitioners and all other occupants of Customs Quarters Willington Island, Kochi are consumers of the first respondent – Water Authority entitled to supply of water for domestic purposes liable to be charged only at the rates for various periods as evidenced by Exhibit P-3 and at rates fixed thereafter for such consumption for time to time by the first respondent – Water Authority.
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> ii) to issue a writ in the nature of mandamus or other appropriate writ, direction or order directing respondents 1 and 2 to revise the bills for water charges issued by them to the fourth respondent – Port Trust by determining the water charges for the quantity supplied to and consumed by the Customs Quarters in Willington Island, at rates applicable for domestic consumption; and to direct the fourth respondent to enforce only such bills as against the fifth respondent and petitioners and such others;
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> iii) to issue a writ in the nature of certiorari, or other appropriate writ, direction or order, calling for the records leading to Exhibits P-2, P-4 and P-5 circulars issued by the fourth respondent – Port Trust and to quash the same, in so far as it purports to impose any amount as part of water charges on the petitioners and such others through the fifth respondent in excess of the rate at which water is supplied to the fourth respondent by respondents 1 and 2;
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> iv) to issue a writ in the nature of mandamus or other appropriate writ, order or direction directing the fourth respondent to refrain from collecting any sales tax on the supply of water to the petitioners;
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> v) to issue a writ in the nature of mandamus or other appropriate writ, order or direction directing respondents 1 and 2 to supply water to the petitioners and similar others for domestic purposes at rates applicable to other domestic consumers within the limits of the Corporation of Cochin;

vi) to issue such other writ, direction or order as deemed fit; and

vii) to award costs."

2. The learned Single Judge dismissed the writ petition holding that the petitioners are not entitled to the reliefs prayed for.

3. Certain facts are not in dispute. The Willingdon Island is owned and possessed by the Cochin Port Trust. The Kerala Water Authority supplies water by way of two connections to the Cochin Port Trust Storage System. In Willingdon Island, the Cochin Port Trust had leased out lands to various Government Departments for construction of quarters for their officers and employees. The petitioners are the officers and employees of the Customs Department. The Cochin Port Trust supplies water to the quarters constructed by the Customs Department. From the employees of the Customs Department, the Department collect water charges and pay directly to the Cochin Port Trust. There is no privity of contract between the petitioners and the Cochin Port Trust. The contention of the petitioners is that they are entitled to get supply of water directly by the Kerala Water Authority on payment of water charges directly to the Kerala Water Authority at domestic tariff in view of the provisions of the Kerala Water Supply and Sewerage Act, 1986.

4. After having heard learned counsel for the appellants and the counsel appearing for the Cochin Port Trust, the Kerala Water Authority and the Customs Department, the learned counsel for the appellants made a submission that the appellants may be permitted to make a detailed and comprehensive representation to the Customs Department for waiver or reduction of the water charges. It is pointed out that during the pendency of the writ petition as well as this writ appeal, as per the interim orders passed by this Court, the appellants/petitioners were paying water charges only at the

rates that are applicable to domestic consumers of the Kerala Water Authority. It is submitted that a direction may be issued that if the appellants make such a representation to the Customs Department within a period of two months from today, the Customs Department shall have consultation and discussions with the Cochin Port Trust as well as the Central Government in the matter of the tariff to be applied in respect of the water charges to be paid by the appellants and similarly situated officers and employees of the Customs Department. In view of the submission made by the learned counsel for the appellants, the writ appeal is disposed of as follows:

i) The appellants/petitioners in the writ petition shall submit a detailed representation to the Commissioner of Customs, Customs House, Kochi-9 within a period of two months from today.

ii) The Commissioner of Customs shall have a detailed and meaningful discussion with the Cochin Port Trust and shall take up the matter with the Central Government and the Kerala Water Authority so that the problem faced by the appellants and similarly situated officers and employees of the Customs Department could be solved within a reasonable time.

iii) Till a final decision is arrived at in the matter of payment of water charges, the appellants/petitioners shall be entitled to the benefit of the following interim orders passed in C.M.P.No.8574 of 1996 in O.P.No.4870 of 1996 dated 4th April, 1997 and C.M.P.No.1459 of 2002 in W.A.No.513 of 2002 dated 19th March, 2002 respectively.

> "There will be a direction to the respondents only to collect domestic rate for water consumed by the employees of the customs department residing in the customs quarters for a period of three months. It is further made clear that customs department as well as the Water Authority will find out ways and means to collect domestic rate from the petitioners."

"Petition praying that in the circumstances stated in the affidavit filed therewith the High Court be pleased to direct the respondents to collect water charges only at domestic rate fixed by the 1st respondent-Water Authority for water consumed by the employees of the customs department residing in the Customs Quarters, pending final disposal of this writ appeal.

This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof, and upon hearing the arguments of Mr.Thottathil B.Radhakrishnan, Advocate for the petitioners, and of Advocate Smt.Chincy Gopakumar for R1 & R2, Standing Counsel for Cochin Port Trust for R4 and of Govt. Pleader for R6, the court passed the following:

O R D E R

Smt.Chincy Gopakumar Standing Counsel for Kerala Water Authority takes notice for R1 and R2. Standing Counsel for Cochin Port Trust takes notice for R4. Govt. Pleader takes notice for R6.

Serve a copy of the appeal to the Standing Counsel for respondents 3 and 5.

There will be an interim direction as prayed for until further orders."

iv) This judgment shall not be treated as a precedent.

In view of the order passed in the writ appeal C.M.P.No.1459 of 2002 is closed.

(H.L.DATTU)
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

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